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TAGS: [PGOV](#) [PHUM](#) [KJUS](#) [KCOR](#) [AR](#)
SUBJECT: ARGENTINA'S JUDICIAL BRANCH INCREASINGLY SUBJECT
TO POLITICAL INTERESTS

Classified By: Ambassador E. Anthony Wayne for reasons 1.4 (b) & (d).

[¶1.](#) (SBU) Summary: President Cristina Fernandez de Kirchner is cementing control over the judicial branch by legislating discretion and political criteria into judicial processes. New legislation approved on May 21 increases executive branch influence over the filling of vacant judgeships, and a proposed reform to the process of selecting judges similarly would increase political discretion. President of the Association of Judges and National Functionaries of Justice Ricardo Recondo strongly warned on April 21 that judges in the current political context are not able to prosecute political players without risking their jobs. Recondo's statement prompted debate over the extent of judicial independence and effectiveness in Argentina. End Summary.

Circumventing Justice -----

[¶2.](#) (SBU) Argentina's Congress approved a bill on May 21 to establish a process to fill more than 170 vacant judgeships. The bill was in response to the Supreme Court's decision last year that the system of temporary judges was unconstitutional and provided Congress a deadline of May 24 to come up with a new system. Although given a year to come up with a new plan, the Congress only started debating the law at the beginning of May. The law as passed states that in the case of a vacant judgeship, the district should fill the vacancy with another equally competent judge from the same jurisdiction or if not, a judge from a nearby jurisdiction. If this condition cannot be met, however, the new law proposes an alternative: selecting a judge from a list of 70 lawyers selected by the executive branch and subsequently approved by the Senate and the President. The law does not stipulate a fixed term for the temporary judges nor does it allow for law clerks -- often selected as temporary judges because of their knowledge of the day-to-day work of the job -- to fill the position. The Kirchners' majority in both houses secured passage of the bill over the opposition's objections.

Current Candidate-Selection Process for Judges -----

[¶3.](#) (U) Argentina's Judiciary Council is responsible for selecting candidates to fill federal judgeships and vetting applicants through the process. The first committee the applicants must pass through is the Selection Committee, which is composed of three congressional representatives, three judges, an academic representative, and an executive branch representative. The current members are: President and Frente Para la Victoria (FPV) deputy Diana Conti, FPV deputy Carlos Kunkel, Radical Civic Union (UCR) deputy Oscar Aguad, judge Luis Maria Bunge Campos, judge Miguel A. Galvez, judge Luis Maria Cabral, academic Mariano Candiotti, and Secretary of Justice Marcela Losardo. (Losardo is the executive branch representative; her position as Secretary of Justice is not necessarily related to her post.)

14. (U) Debate on reforming the system of selecting candidates had paralyzed the Selection Committee for over a year and left numerous judgeships vacant. In the current process, applicants are judged on three criteria: their background, a written test, and an interview. The Judiciary Council chooses three candidates by majority to fill a given vacancy; the list of three is passed to the President, who picks one for the appointment. The Senate must confirm the President's nominee. (Given the Kirchners' approximately two-thirds majority in the Senate, any judge they put forward should sail through.)

Pushing for More Discretion

15. (U) President of the Judicial Committee Diana Conti originally proposed her reform to the process in the middle of 2007 and is still pushing it forward. Conti's pending reform proposal has four main elements that would increase the council's discretionary role in selecting judges throughout the process. In the proposed system, most of the weight would be put on the interview, relegating the exam score and the applicant's career and experience to the foreground. The ranking of judges in recent years has been less relevant, as the executive branch has selected its candidate by circumventing the suggested rank order and choosing candidates with political affiliation. The new system would create an initial vetting process where any applicants could be excluded from progressing at the discretion of the counselors. Previously, almost anyone could apply to go through the process. In a few rare cases, council members could present motions to exclude applicants, but the applicant was able to oppose the motion -- an ability the reform removes.

16. (U) Conti also proposes eliminating the anonymity of exams and posting exam topics on the internet a week before the exam. Anonymity was in place to avoid favoritism or grudges between examiners and applicants -- getting rid of this would allow for biases towards individual candidates based on the examiners' personal or previous knowledge of the individual. Finally, the proposed reforms would virtually eliminate the relevance of the applicants' background and experience. Currently, the participants are rated 30% on their academic background, 30% on their legal career, and 40% on their specialization. If the new project is enacted, the interview will become paramount in the consideration. Ultimately the selection of judges is political as the President, in consultation with her Legal and Technical Secretary, picks the judge from the final list of three.

Prominent Judge Speaks Out

17. (U) President of the Association of Judges and National Functionaries of Justice Ricardo Recondo warned in an interview with leading daily La Nacion on April 21 that judges are limited in their ability to investigate political actors. Recondo said "the conditions to prosecute a political player don't exist...there are many judges that would have the courage to do so, but it could cost them their job and judges don't have any other work." Recondo also said that the proposed reforms to selecting judges are "legalizing the illegal" by granting "political discretion to name judges who want power." He explained the recent exodus of judges from the system by noting judges were "tired of pressure, persecution, arbitrariness, and of being attacked and receiving a salary four times less than what they earned when they were working as an attorney." In response, the Judiciary Council asked judges to show proof of the pressures Recondo mentioned and name the government functionaries that threatened them.

Comment

18. (C) The Kirchners' drive to strengthen presidential power

is clear in these developments. Recondo's comments emphasize that judges in Argentina are under increasing pressure to bend to the will of the executive and more have retired to escape the politicization. The Judiciary Council's response to Recondo's accusations correlates to the Kirchners' consistent efforts to strengthen the President's hand as we have seen reflected in other areas, e.g. Trade Secretary Guillermo Moreno's tactics to control prices in the economy and piquetero leader Luis D'Elia's antics on the streets. The new law and proposed reforms further threaten judicial independence and aim to shift the balance to judges aligned with the government's politics.

WAYNE